



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 578

## IN THE MATTER OF HERBERT HOHENGASSER

### DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Herbert Hohengasser ("Hohengasser") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to find order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 5, 1997, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Hohengasser. The Commission has conducted its inquiry and, on September 23, 1998, found reasonable cause to believe that Hohengasser violated G.L. c. 268A, §19.

The Commission and Hohengasser now agree to the following findings of fact and conclusions of law:

1. Hohengasser was, during the time relevant, a Town of Greenfield alternate plumbing and gas fitting inspector. As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. As an alternate plumbing inspector, Hohengasser issued plumbing and gas permits and conducted preliminary and final inspections of the work done (pursuant to the permits) to ensure compliance with the building code. He only did this when the regular inspector was unavailable.
3. The town paid Hohengasser for these inspections as follows: \$581 in 1996; \$308 in 1995; and \$347 in 1994.
4. Until February 1995, Hohengasser was doing business as a private plumbing contractor through a corporation, Hohengasser Plumbing & Heating, Inc. ("HP&H").
5. On March 1, 1995, Hohengasser sold his stock in the company to his son Daniel. Thereafter, Hohengasser had no financial interest in or connection with HP&H.<sup>1/</sup>
6. Hohengasser acted as a plumbing inspector regarding the following HP&H jobs:
  - (1) August 8, 1995, issued plumbing permit #6003 to HP&H regarding installing a backflow preventer at the Franklin Medical Center; signed off on the final inspection the same day;

(2) August 10, 1995, issued plumbing permit #6006 to HP&H regarding plumbing repairs necessitated by a fire at 166 Hope Street; signed off on a rough inspection on August 9, 1995;<sup>2/</sup>

(3) August 12, 1995, issued plumbing permit #6005<sup>3/</sup> to HP&H for replacing a boiler at 21 Davis Street; signed off on the rough inspection on August 17, 1995;

(4) August 15, 1995, issued gas fitting permit #4491 to HP&H for replacing a boiler at 26 Shattuck Street; signed off on a boiler inspection on August 19, 1995;

(5) August 24, 1995, inspected 24 Shattuck Street (a second floor bathroom was remodeled);

(6) September 13, 1995, inspected 118 Hastings Street and 47 White Ave. (water and heating systems);

(7) September 15, 1995, inspected 212 Davis Street (final inspection); and

(8) September 21, 1995 inspected 26 Shattuck Street (additional remodeling work).

7. As HP&H's owner, Hohengasser's son Daniel had a financial interest in these inspections.

8. Except as otherwise permitted by that section, General Law c. 268A, §19 prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge a member of his immediate family has a financial interest.<sup>4/</sup>

9. The decisions to issue permits and the inspection determinations were particular matters.<sup>5/</sup>

10. Hohengasser participated<sup>6/</sup> in those particular matters by issuing the permits and/or performing the inspections.

11. At the time he so acted, Hohengasser was aware that his son Daniel owned HP&H. Therefore, he knew that his son had a financial interest in these particular matters.

12. Therefore, by issuing the permits and performing the inspections as described above, Hohengasser participated as a municipal employee in particular matters in which to his knowledge an immediate family member<sup>7/</sup> had a financial interest, thereby violating §19.

In view of the foregoing violations of G. L. c. 268A by Hohengasser, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hohengasser:

(1) that Hohengasser pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil penalty for violating G.L. c. 268A, §19; and

(2) that Hohengasser waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: October 22, 1998**

1/For example, he was not an officer, director or employee of HP&H.

2/Apparently, the plumber submitted the permit application and began the work on or before August 9, 1995.

3/Permit applications are submitted to the building inspector's office along with the fee. The application form is given a permit number and then forwarded to the plumbing inspector. Permit nos. 6005 and 6006 were applied for on August 10, 1995; however, Hohengasser reviewed them on different days.

4/None of the exception applies.

5/Particular matter" means any judicial or other proceeding, application submission, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

6/"Participate" means participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

7/"Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).